

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of the Office of Financial and Insurance Services**

In the matter of:

Clare Kelly

Enforcement Case No. 05-3909

and

**Kelly Financial, LLC
9692 Russell
Northville, Michigan 48167,**

Respondents.

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**Issued and entered
on May 22, 2006
by Linda A. Watters,
Commissioner**

ORDER TO CEASE AND DESIST

and

NOTICE OF OPPORTUNITY FOR HEARING

The Commissioner of the Office of Financial and Insurance Services (“OFIS”), pursuant to her statutory authority and responsibility to administer and enforce the Mortgage Brokers, Lenders, and Servicers Licensing Act (“MBLSLA”), MCL 445.1651 *et seq.*, hereby orders Clare Kelly and Kelly Financial, LLC, collectively referred herein as Respondents, to immediately cease and desist from conducting business as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the MBLSLA. Respondents are also notified of an opportunity to request a hearing on this matter.

I.

ORDER TO CEASE AND DESIST

1. The authority to issue the Cease and Desist Order is found in Section 16(1) of the MBLSLA, which states:

After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act. MCL 445.1666(1).

2. A review of OFIS records reveals that Respondents are neither licensed nor registered under the MBLSLA.

3. Section 2 of the MBLSLA prohibits a person from acting as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the Act unless that person is otherwise exempt from the Act. MCL 445.1652.

4. A “mortgage broker” is defined by Section 1a(1) of the MBLSLA, as follows:

“Mortgage broker” means a person who, directly or indirectly, does 1 or both of the following:

- (i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.
- (ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans. MCL 445.1651a(1).

5. On September 21, 2005, OFIS received a complaint alleging that Respondents have engaged in unlicensed mortgage activity. The complaint alleges that Respondents were operating as a net branch for a licensee, Dynamic Mortgage Inc., license no. FL 2229, and Respondents have been receiving 1099 income from Dynamic Mortgage Inc.

6. Additionally, OFIS learned that Respondents have been advertising mortgage incentives in UAW publications, the advertisements state that Respondents “specialize in mortgages for UAW members!”

7. Based on the foregoing, Respondents have engaged in mortgage related activity without the requisite license or registration pursuant to the MBLSLA and are subject accordingly to actions authorized under the Act.

8. Based upon the violation of the MBLSLA, Respondents may be subject to all penalties and fines that may be imposed against a licensee or registrant. Section 1a(k) of the MBLSLA provides:

“Licensee” means a person licensed or required to be licensed under this act. MCL 445.1651a(k).

Section 29 of the MBLSLA provides, in pertinent part:

(1) A person or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of such person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 3 years, or both:

(a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act.

(2) If the commissioner finds that a licensee or registrant has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or a person who controls the licensee or registrant of not more than \$1,000.00 for each violation, except that the licensee, registrant, or a person shall not be fined more than \$10,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

(b) Suspend or revoke a license or registration or refuse to issue a license or renew a license or registration.

(c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 445.1679.

9. Section 16 of the MBLSLA provides, in part:

A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order. 445.1666(3).

It is therefore **ORDERED** that Respondents immediately cease and desist from conducting any business regulated by the MBLSLA without first obtaining the requisite license or registration under the Mortgage Brokers, Lenders, and Servicers Licensing Act.

The Commissioner of OFIS specifically retains jurisdiction of the matter contained herein to issue such further order or orders as she may deem just, necessary, or appropriate so as to assure compliance with the law and protect the interest of the public.

II.

NOTICE OF OPPORTUNITY FOR HEARING


Section 16(2) of the MBLSLA provides:

A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 445.1666(2).

Should Respondents wish to request a hearing relating to the Commissioner's Order to Cease and Desist, a hearing must be requested in writing within 30 days of the issuance of this Order. The request for a hearing must be addressed to:

Marlon Roberts
Office of Financial and Insurance Services
Ottawa State Office Building, Third Floor
611 West Ottawa Street
P.O. Box 30220
Lansing, Michigan 48933

Please be advised that any statements made are voluntary and may be used in any proceeding that may be held. If a hearing is requested, Respondents have the right, at Respondents' expense, to legal representation at the hearing. Respondents that are corporations must be represented by a licensed attorney. Any contact with OFIS shall be directed to Marlon Roberts at (517) 335-4593.

A handwritten signature in black ink, reading "Linda A. Watters" followed by a horizontal flourish.

**Linda A. Watters,
Commissioner**